[APPELLATE CRIMINAL JURISDICTION]

HORNE, J.

August 2, 1940.

THE PUBLIC PROSECUTOR

(Appellant)

vs.

LONG BIN ABDULLAH

(Respondent).

[PAHANG MAGISTRATE'S APPEAL No. 13 of 1940]

Road Traffic Enactment No. 17 of 1937—Ss. 80 (1), 113 (2), 118 (1) a—Using private car as public service carriage without licence—Evidence of prior user of vehicle in manner alleged as well as user on day of offence charged—Presumption under S. 113 (2)—Duty of Magistrate.

The respondent was charged under S. 80 (1) of the Road Traffic Enactment of using a private car as a stage carriage without a licence an offence punishable under S. 118 (1) (a) of the Enactment. Evidence was given of the prior user of the vehicle in the manner alleged as well as user on the day of the offence charged. The Magistrate found that the evidence amounted to "great suspicion" only and acquitted the accused.

Held, (1) the Magistrate's verdict was against the weight of the evidence.

(2) the Magistrate had disregarded S. 113 (2) of the Road Traffic Enactment and therefore his verdict was wrong.

J. F. DRAPER for the Public Prosecutor.

Cur. Ad. Vult.

Horne, J.—The Magistrate ought to have convicted the respondent. On the evidence given, which shewed prior user of the vehicle in the manner alleged as well as user on the day of the offence charged, there was something more than a case of what the Magistrate terms "great suspicion"; and it cannot be said that there can be at one and the same time great suspicion and no evidence. The verdict was therefore against the weight of evidence.

In addition there are the presumptions laid down by section 113 (2) of the Road Traffic Enactment. The words used are "shall be presumed" and I think that the effect of these words is the same as the expression "shall presume" as used in the Evidence Enactment (see section 4 (2) thereof). Consequently once a case fit for the accused to answer is established with the aid of these presumption, it falls upon the accused to shew that he did not in fact carry either the passengers or goods for reward. In this case the respondent did not do so. The Magistrate disregarded section 113 (2) and for that reason also the verdict is wrong.

The verdict has accordingly been set aside and an order of conviction substituted and the respondent has been cautioned.

The Road Traffic Enactment having now been in force some time and warning having been given, future cases should be punished by fine or imprisonment.

Magistrates should note that insurers when granting a policy to an owner against third party risks stipulate for a particular user of the vehicle *i.e.* a lower rate of insurance is paid for private cars than for public service vehicles and goods carriers. If a vehicle insured as a private car carries passengers for reward and an accident happens when the private car is so being used, the insurer is entitled to and will treat the policy as void. The injured passengers will get nothing but what they can recover from the owner. The offence is therefore of much greater danger to the public than it may at first sight appear. And it is because of this danger that the legislature has thought fit in some degree to throw a burden of disproof upon the accused. Moreover, those persons who take out proper licences and pay for adequate insurance are entitled to protection from unfair and dangerously illegal competition. If they do not receive such protection from the Courts they will be tempted to bribe the Police as has recently been the case in Raub and other places in Pahang.

Appeal allowed.